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Letter dated 11 February 1999 from the Permanent Representative of Haiti to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the text issued by the Ministry of Foreign Affairs of Haiti entitled "Position of the Haitian Government on the expiration of the mandate of the forty-sixth Legislature".

I should be grateful if you would arrange for the text of this letter and its annex to be distributed as a document of the General Assembly and of the Security Council.

(Signed) Pierre LELONG

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Annex

POSITION OF THE HAITIAN GOVERNMENT ON THE EXPIRATION OF THE MANDATE OF THE FORTY-SIXTH LEGISLATURE

(Port-au-Prince, 26 January 1999)

More than 18 months ago, the resignation of the Prime Minister Rosny Smarth, following the disputed results of the elections of 6 April 1997, triggered a political crisis. This crisis was exacerbated when he refused to continue in a caretaker capacity and effectively abandoned his post in violation of article 165 of the Constitution which stipulates that: "In the event of the Prime Minister's resignation, the Government shall remain in place until the appointment of a successor, in order to transact current business".

Conscious of the fact that the political crisis resulted from the controversy surrounding the elections, President Préval has always maintained that that issue must be resolved as a first step towards any solution. In that context, for example, between 17 April and 28 October 1997, he held 25 meetings with representatives of the Organisation du Peuple en Lutte (OPL), the political party holding a relative majority in Parliament. He also met with, inter alia, representatives of Fanmi Lavalas, the Mouvement Ouvrier Paysan (MOP) and institutions of civil society, including workers' and employers' organizations and religious associations of every denomination.

These meetings were about to produce concrete results when the OPL representatives withdrew their support for the solution which had been negotiated. Consequently, the Presidential Committee which was to evaluate the elections of 6 April 1997 has been unable to function as intended.

The crisis reached its peak with the expiration of the mandate of the forty-sixth Legislature on the second Monday in January 1999, in conformity with article 158 of the Electoral Law of 14 February 1995 which provides that: "The terms of the Second Senators, Deputies, Mayors and Members of the various Conseils d'administration de section communale (CASEC) elected during the elections of 1995 shall expire on the second Monday in January 1999, irrespective of the date on which they were sworn in."

This provision gives effect to articles 92 and 92-1 of the Constitution, which stipulate:

Article 92: Deputies shall be elected for four (4) years and may be reelected an indefinite number of times.

Article 92-1: They shall take office on the second Monday in January, and shall sit in two (2) annual sessions. The duration of their term shall comprise a legislative session.

Because of the political context in the wake of the coup d'état of September 1991, no elections could be held in 1994. The mandate of the forty-fifth Legislature having expired on the second Monday in January 1995, this

resulted in a temporary institutional vacuum because the forty-sixth Legislature was not sworn in until 18 October 1995, instead of on the second Monday in January as stipulated by the Constitution. Given this exceptional situation, which is comparable to the present one in January 1995, the Senate of the Republic adopted a resolution amending its procedures. According to article 1 of that resolution, until such time as the forty-sixth Legislature takes office, the quorum of the Senate authorized to hold meetings with a view to taking decisions within the scope of its constitutional prerogatives shall be six senators.

It must be emphasized that the Electoral Law gives effect to the provisions of the Constitution; articles 90-1, 130, 130-1 and 130-2 of the Constitution stipulate that:

Article 90-1: Deputies shall be elected by an absolute majority of votes cast in the Primary Assemblies, according to the conditions and in the manner prescribed by the Electoral Law.

Article 130: In the event of the death, resignation, disqualification or judicial interdiction of a Deputy or Senator, or acceptance by him of a duty incompatible with that of a member of the Legislature, a by-election shall be called by the Primary Electoral Assembly, to be conducted by the Permanent Electoral Council in the month the vacancy occurs, to elect a replacement in the Electoral District in question for only the remainder of the unexpired term.

Article 130-1: The election shall take place within thirty (30) days after convocation of the Primary Assembly, pursuant to the Constitution.

Article 130-2: The same procedure shall apply in the absence of an election or in the event that the elections in one or more Electoral Districts are declared null and void by the Permanent Electoral Council.

It is clear, in the light of these articles, that the absence of elections in 1994 resulted in a forty-sixth Legislature with a mandate valid only for the remainder of the unexpired term.

Despite the requirements of the Constitution and the Electoral Law, Members of Parliament adopted a resolution extending the term of the Second Senators and Deputies until the second Monday in September 1999, claiming that by so doing they would be avoiding what they described as an institutional vacuum, although they acknowledged, at the time they took office, that their terms would expire on the second Monday in January 1999. This point is made quite clearly on pages 74, 76, 77, 78, 82, 84 and 85 of the official register published by the Parliament in 1996, entitled "The Forty-Sixth Legislative Session of the Haitian Parliament".

On Monday, 11 January 1999, President René Préval stated in a message to the nation that he was not constitutionally empowered to extend or reduce the terms of the Members of Parliament and that he could do no more than note the expiration of the constitutional terms of the Second Senators and Deputies elected under the Electoral Law of February 1995. In conclusion, the President of the Republic has not on any account dissolved the Parliament; it is still

sitting with nine (9) Senators whose terms will expire in 2001. Nor has there been, a fortiori, any sudden or untimely interruption of the democratic, institutional political process. The Head of State has not invested himself with dictatorial powers, nor has he announced any decision to govern by decree, as is being claimed, out of ignorance, lack of information or excessive partisanship, based on resolution 1080 of the Organization of American States (OAS).

As guarantor of the smooth functioning of institutions in accordance with the prescripts of the Constitution, he has initiated consultations with all sectors of society in order to resolve the problem of the dysfunction of the parliamentary institution. According to the President, the only way to do this is by holding fair and credible elections at the earliest opportunity. Accordingly, he has called on all the political forces to enter into a dialogue with a view to establishing a consensus-based Provisional Electoral Council. It is clear that he sees the strengthening of democracy as the means of resolving the current institutional crisis.